

The 13th March, 1995

No. 14/13/87-6Lab./361.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s Advance Forgings Pvt. Ltd *versus* Chiranji Lal.

BEFORE SH. N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Reference No. 265 of 89

IN THE MATTER OF INDUSTRIAL DISPUTE

between

SH CHIRANJI LAL C/O SH. ASHOK SHARMA H. No. 2214, SECTOR-3C,
FARIDABAD .. Workman.

and

M/S ADVANCE FORGINGS PVT. LTD, 31-A, DLF AREA, FARIDABAD .. Management.

Present :

Sh. Ashok Sharma, Authorised Representative for workman.

Sh. Jagbir Bhadana, Authorised Representative for management.

AWARD

Under the provisions of section 10 (1) (d) of Industrial Disputes Act, 1947, the Government of Haryana have,—*vide* Endorsement No. OV/FD/148-87/37121-26 dated 28th August, 1986 referred the following dispute between the parties above named for adjudication :—

“Whether the services of Sh. Chiranji Lal were terminated or he had lost his lien by remaining absent. If so, to what relief he is entitled?”

2. The case of the workman is that he was appointed as Milling man on 1st May, 1985 and was in receipt of Rs. 1115 as his monthly wages. He had proceeded on leave on 17th March, 1987 and remained thereon upto 19th March, 1987. He had submitted leave application to the Management on 21st March, 1987 after availing of the leave. The leave applied for was sanctioned on the same day. Thereafter, the workman attended to his duties regularly upto 26th March, 1987. He was on rest on 27th February, 1987 and that he had worked for the whole day of 28th March, 1987 but his attendance was not marked on his attendance card. His allegation is that he was not allowed to work in the morning of 29th March, 1987. When he had not been allowed to perform his duties on 30th March, 1987 as well he had approached the Management,—*vide* registered letter dated 31st March, 1987. The Management did not allow him to do his job and terminated his services quite in an illegal and arbitrary manner and without complying with the provisions contained in Section 25-F, 25-N and 25-G. No notice pay in lieu of notice, retrenchment compensation was paid. It is on these facts that the workman has claimed his reinstatement with continuity of service and full back wages.

3. In the written statement filed by the Management, stand taken is that the workman had himself lost his lien by remaining absent and after raising the Industrial Dispute which is not maintainable, the workman had man-handled and threatened the company officials. It has also been contended that there exists no Industrial Dispute as defined in Section 2-A Industrial Disputes Act. Other objection taken is that demand notice dated 8th April, 1987 was rejected by the Government,—*vide* order No 31145, dated 6th August, 1987 and,—*vide* letter No 11936 dated 24th March, 1988. But before making present reference the Management was neither given intimation nor given hearing and, as such, on that account present reference is bad is law. The Management has also taken a stand that the workman is gainfully employed and that the claim statement filed by him is neither signed nor verified by the claimant.

4. In the rejoinder, pleas taken in the claim statement have been reiterated while those in the written statement controverted.

5. On the pleadings of the parties, following issues were laid down for adjudication :—

(1) As per reference?

- (2) Whether the reference is bad in law? OPM
- (3) Whether the reference has been made by Government after once rejecting the demand notice without offering the opportunity of hearing to the Management? OPM
- (4) Whether the workman is gainfully employed? OPM
- (5) Whether there is no Industrial Disputes? OPM

6. I have heard Authorised Representative of the parties and perused facts on record. My findings on each of the issues with reasons therefore are as under :—

Issue No. 2 and 3

7. Issue No. 2, & 3 being inter-connected are taken up together. The contention of the Management is that present reference has been made by the State Government, on the basis of demand notice dated 8th April, 1987 which had already been rejected by the State Government,—*vide* orders dated 6th August, 87 and 20th March, 1988. That when no hearing was given to the Management before referring the same demand notice to Labour Court for adjudication, the reference is rendered bad in law. Works Manager V. K. Malhotra examined as MW1, placed on record Ex. M-11 copy of letter dated 6th August, 1987 where-by the workman was informed that since he had lost his lien by remaining absent, the state Government, did not consider it is a fit case to refer the same to Labour Court for adjudication. Thereafter, the workman filed appeal dated 26th December, 1987 against the rejection of his demand notice. A copy of the same was sent to the Management,—*vide* Ex. M-12 letter of 6th January, 1988 for giving comments within 2 weeks. Copy of comments so furnished is Ex. M-13. The appeal so filed was dismissed on 24th March, 1988,—*vide* Ex. M-15. V. K. Malhotra MW-1 stated further, that after the dismissal of appeal, the Management did not get any further information and, therefore, did not know under what circumstances present reference had been made without giving opportunity of hearing to the Management. Ciranji Lal workman examined as WW-1 admitted in his cross-examination that his case had been rejected twice by the State Government. He, further stated that he had given information at the factory gate about the filing of an appeal by him and that he had not taken receipt of the same from the gate keeper. It is clear from this all that neither the State Government nor the workman had given any intimation to the Management before the making of the present reference after the rejection of demand notice dated 8th April, 1987 two times.

8. To support his contention that the reference is not rendered bad because of non providing of opportunity of hearing to the management. Authorised Representative for the workman placed reliance on Bharat Pumps and Compressors Ltd *versus* State of U. P. & others 1994 LLJ 455 and Management of Modella Woollens Ltd. *versus* Presiding Officer, Labour Court, U.T., Chandigarh 1994 (8) FLR 148. On the other hand Authorised Representative for the Management placed reliance on the Division Bench Judgement of our own Hon'ble High Court reported as M/s Escorts Ltd, Faridabad *versus* Industrial Tribunal, Haryana, Faridabad and others reported as 1983 lab.I. C. 223 wherein it was held that while referring a dispute for adjudication in exercise of power second time under section 10 (1) of Industrial Disputes Act, after the same had been rejected earlier, 'Rule of Audi Alteram Partem' is attracted. It was also held that over proceedings on the basis assumption that the exercise of the power herein is administrative in character, the question would still remain whether the rejection of an earlier application for the reference of a dispute by the workman would give same vestige of right to the employer entitling him to the heard before the earlier order is recalled and reversed. It had also been held in this very authority that although earlier rejection does not give any vested right to the employer to have the issues finally closed and no consideration of adjudicate can possibly arise in this situation. Nevertheless in view of arose consequences that may well ensure by referring a dispute which has been earlier rejected, the employer would be entitled to be hear before it is re-opened.

So, relying on the above mentioned Double Bench authority of our own Hon'ble High Court of Punjab & Haryana, I hold that when the State Government did not provide an opportunity to the employer, before making present reference once the same demand notice had been rejected by it, the reference so made is bad in law. Both these issues are thus, decided in favour of the Management and against the workman.

Issue No. 1:

9. In his examination as WW-1, the workman stated that in connection with his agricultural pursuits, he had gone to his villages by taking leave from 17th to 19th of March, 1987. The factory was closed on account of 'Holi' on 15th and 16 while 29th of March, 1987 was Sunday. So, after availing of leave aforesaid mentioned he had reported for duty on 21st March 1987 and got leave from 17th to 19th March, 1987 sanctioned. He had thereafter worked upto 28th March 1987 and then he was not allowed to perform his duties on 29th March, 1987. He also stated that on 31st March, 1987 he had sent an application Ex. W-1 to the Management under Regd. cover and the postal receipt thereon is Ex. W-2.

requesting therein that he be taken back into service with full back wages. V. K. Malhotra examined as MW-1 denied the letter Ex. M-1. The workman has not placed on record, A. D. receipt. Even if it is presumed that Ex. W-1 had reached the Management on any date after 31st March, 1987 (date of issue) that would not promote the case of the workman because on 31st March, 1987 itself the Management had issued letter Ex. M-6 to the workman at his admitted village address as given in his application Ex. M-1 for employment. This a part, date viz., 29th March, 1987 on which the workman alleges to have been stopped at the factory gate creates suspicion about it because of cover writing of digit '9'. The date seems to have been changed to 29th March, 1987 either from 20th March, 1987 or 28th March, 1987. To show his *bonafides*, workman should have made a complaint to the Labour officer and his silence even for 29th and 30th March, 1987, shatters his stand.

10. Stand of the workman that he had got his leave availed of from 17th to 19th March, 1987 sanctioned on 21st March, 1987 also does not appear to be correct. Firstly, because there is no mention in the demand notice that he was on leave from 17th to 19th March, 1987. Secondly, leave application Ex. W-3 only been recommended by the Incharge. The column meant for sanctioning of leave is still lying blank. Thirdly, in the date put below the signatures of the Foreman some over writing appears to have been made in respect of day and month. So, from all this, it can be safely concluded that the workman's absence from duty from 17th to 19th March, 1987 was also not an authorised one.

11. The record of daily production from 20th March, 1987 to 27th March, 1987 Mark 'C' produced by the workman has also not helped the case of the workman. He had tried to show from it that he was on duty from 20th to 27th March, 1987, and had been giving production. V. K. Malhotra examined as MW-1 stated that the job of the workman was not that of production and in the absence of original record he could not say as to whether Mark 'C' was prepared by Foreman Mewa Singh. On the direction of the court, the witness had produced the original daily production register for the month of March, 1987. On the basis of the information contained therein, the witness stated that the production register for 25th March, 1987 was filled in by Gian Chand, workman Chiranji Lal was shown as absent in the production record for 26th March, 1987. The factory was shown to be close on 27th March, 1987. The witness also denied that Mewa Singh Foreman was on duty from 25th to 27th March, 1987. This apart, the version of the workman that the original of Mark 'C' was given by the owner to a workman named Kanwal Singh to burn the same and that before doing so, that workman had got a copy photographed for passing on the same to Chiranji Lal does not appear to be a plausible one. The workman could have vindicated his stand producing in the witness box the above said two important witnesses namely Mewa Singh and Kanwal Singh. Merely to say that the Management had prepared false daily production register for the month of March, 1987 cannot be taken to carry conviction.

12. It follows from the above discussion that the workman has not been successful in leading cogent evidence to prove his stand that he was stopped at the factory gate on 29th March, 1987. On the other hand, the Management has shown it quite in an acceptable manner that the workman had remained absent from duty from 17th March, 1987 onwards and was issued letter dated 21st March, 1987 (Ex. M-4 and UPC Ex. M-5) containing a warning that he should resume duty immediately otherwise strict disciplinary action would be taken against him. When the workman had failed to turn up the Management had, informed the workman,—vide letter Ex. M-6 of 31st March, 1987, that he had made violation of the terms of appointment letter by remaining absent from duty since 17th March, 1987 and had thus lost his lien. The workman who is carrying on agricultural pursuits also does not appear to be interested in service as is evident from the statement made by him while being cross-examined that he was no more anxious to remain in service. So, for this reason it has to be taken that he had allowed his service to come to an automatic end. Relevant term and condition No. 7 of the letter of appointment Ex. M-2 is reproduced below:—

"If any workman is found absent continuously upto 7 or more days, his service will come to an end automatically".

It has also come in evidence that along with letter Ex. M-6 of 31st March, 1987, the Management had sent a Bank Draft for an amount of Rs. 2978.50 towards wages, notice pay, service compensation etc. as per details given in Ex. M-7 so as to make compliance of mandatory provisions. The draft sent under registered cover Ex. M-9 was received back undelivered due to non-availability of the workman at his admitted village address.

13. Evidently, it is a case not of termination of services of the workman but of loss of lien in terms of conditions of service which was bilateral contract. Therefore, authority relied upon by Authorised Representative for the workman viz. Management of Model Woolen Ltd., *versus* Presiding Officer, Labour Court, U. T. Chandigarh 1994 (68) FLR 148 is distinguishable from the facts of the instant case and does not help the workman. Accordingly, holding that the workman had lost lien by remaining absent, and the Management had not terminated his services, he is not entitled to any relief. This issue, is decided accordingly.

Issue No. 4:

14. Workman Chiranjit Lal, examined as WW-1 stated in his cross-examination that he lives in his village and is no longer anxious to serve the Management. He claims to be owning 3 1/2 acres of land and the yield there from is 135-140 maunds of wheat and 40-50 maunds of cotton. As regards the rates, the workman stated that it was Rs. 1400 per quintal of cotton and wheat at Government rates fixed from time to time. On this, reckoning, the annual produce comes to the value of Rs. 50,000. This provides enough of proof that the workman is gainfully employed. This issue is thus decided in favour of the Management and against the workman.

Issue No. 5 :

15. The onus of proof of this issue was placed on the Management. This issue had neither been pressed nor any arguments addressed thereon. This issue, is therefore, decided against the Management and in favour of the workman.

16. In view of my findings on issue Nos. 1 to 4, the reference is answered in the manner that the services of the workman had not been terminated. Rather, he had lost his lien by remaining absent and is thus not entitled to any relief.

17. An award is passed accordingly.

N. L. PRUTHI,

The 13th March, 1995.

Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

Endst. No. 377, dated the 16th February, 1995.

A copy with, three spare copies, is forwarded, to the Commissioner and Secretary to Government of Haryana Labour Department, Chandigarh.

N. L. PRUTHI,

Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

The 13th March, 1995

No. 14/13/87-6Lab./372.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. IV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s M. D. The Shahabad Co-op. Sugar Mills, Limited, Shahabad Markanda, District Kurukshetra, Versus Babu Ram :—

IN THE COURT OF SHRI S. R. BANSAL (ADDL. DISTT. AND SESSIONS JUDGE),
PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 159 of 89

SHRI BABU RAM THROUGH SHRI RAM NATH SHARMA, VILLAGE AND POST
OFFICE KHARINDWA, VIA SHAHABAD MARKANDA, DISTRICT KURUKSHETRA
.. Workman

and
THE MANAGING DIRECTOR, THE SHAHABAD COOPERATIVE SUGAR MILL
LIMITED, SHAHABAD MARKANDA, DISTRICT KURUKSHETRA. .. Management

Present: :

WR. Shri J. R. Sharma.

MR. Shri J. P. Singh.

AWARD

In exercise of the powers conferred by clause(c) of sub section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Babu Ram and the management The Managing Director, The Shahabad Cooperative Sugar Mill Limited, Shahabad Markanda, District Kurukshetra to this court for adjudication,—*vide* Haryana Government notification bearing No. 13360-65, dated 24th March, 1989:—

Whether the termination of the services of Shri Babu Ram is valid and justified? If not so, to what relief is he entitled?

The workman raised an Industrial dispute by serving a demand notice dated 7th February, 1989 under section 2-A of the Act. The Conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed, the appropriate Government made the above mentioned reference to this court for adjudication.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and stated that his demand notice may be treated as his claim statement.

In short the facts are that the workman was working with the management as Electrician from 4th September, 1984 onwards and his services were terminated on 7th October, 1988. He has termed his termination to be illegal, arbitrary to curb the legal and justified union activities. It is alleged that enquiry got conducted by the management is partial and the findings were not based on evidence recorded during the enquiry but with prejudice conduct of the enquiry officer. The workman was not given adequate opportunity to conduct his case. It was also alleged that the appointment of Shri U.Kant Advocate as enquiry officer is itself illegal as he was a standing counsel of the management. Moreover no permission was obtained from the competent authority before terminating the services of the workman which is also violation of provisions of section 25-F of the Act. The workman demanded his reinstatement with continuity of service and back wages.

The management pleaded that the services of workman have been terminated after completing all legal formalities. The charges of mis-conduct committed by him were proved in just and fair enquiry. It was also alleged that the workman participated in the enquiry through his lawyer and charges levelled against him were proved in the enquiry. The claim is, therefore, neither legally maintainable nor it can be sustained. The provisions of section 25-F of the Act are not applicable in the case and the workman is gainfully employed.

The workman submitted replication controverting the allegations of the management in the written statement filed and reiterating those made in the claim statement. On the pleadings of the parties the following points in issues were laid down for decision:—

- (1) Whether the impugned termination of services of the workman is invalid? OPW
- (2) Whether the claim is not enable for the reasons stated in preliminary objection No. 1 2 & 3 of the WS? OPM
- (3) Whether the workman had been gainfully employed? OPM
- (4) Relief.

Parties led evidence. I have heard the representatives of the parties. My findings are as under:—

Issue No. 1:

In support of its assertions that a valid proper and just enquiry was conducted against the workman the management examined MW-1 Shri U. Kant, Advocate, who was appointed as enquiry officer,—*vide* Ex. M-1 and who conducted the enquiry and submitted his findings. The witness stated that after his appointment he gave notice Ex.M-2 to the workman as well as to the management for appearing before him. He further proved that Ex. M-3 is the copy of the charge-sheet and testified that Ex. M-4 to Ex. M-12 are the proceedings of the enquiry. The perusal of these documents shows that the enquiry officer recorded the statements of Shri K. L. Issar, Security Officer, Baldev Raj Kohli, Asst. Security officer and gave full opportunity to the lawyer of the workman to cross-examine them. He also recorded the statement of workman. It further shows that during the enquiry the workman absented and an *ex parte* proceedings had to be taken against him. MW-1 U. Kant stated that after hearing both the parties he submitted his findings Ex.M-13. The perusal of these documents shows that all the charges stood proved against the workman. Ex. M-1 to Ex.M-27 are other documents produced

by the management. Ex. M-19 is the show cause notice Ex. M-20 is the reply to the show cause notice Ex. M-21 is another showcause notice Ex. M-22 is the letter,—*vide* which the copy of enquiry report was sent to the workman alongwith the showcause notice. Ex. M-23 is the reply of the workman to the show-cause notice. The workman was given opportunity of personal hearing,—*vide* Ex. M-24,—*vide* Ex. M-25 the services of the workman were terminated by Managing Director of the Mill by his order dated 7th October, 1988. No doubt the workman has appeared as MW-1 and stated that *ex parte* proceedings were taken against him but it is quite evident from the above mentioned facts that it was the workman who himself absented during the enquiry. No doubt the workman also stated that U. Kant Advocate was also the standing counsel of the management but there is no documentary evidence on the file to warrant such a finding. Moreover the management could appoint any of its officer also as the enquiry officer. From the above mentioned circumstances it is quite evident that proper domestic enquiry was conducted in which the workman was associated through out. The representative of the workman argued that the punishment of dismissal of service is too harsh a punishment I do not find any merit in this submission. The persual of the statement of allegation shows that the workman gave a threat to close down the factory illegally and instigated the cane staff to stop their work. He also mis-behaviour with the security Officer, in the office of Managing Director and incited and instigated the workers to resort to illegal strike and further tried to damage and cause loss to the mill. All the charges stood proved against him. The charges are of serious nature. There is no question of showing any leniency to the workman. The finding of this issues shall therefore stand returned against the workman and in favour of the management.

Issue No. 2 and 3:

The onus to prove on these Issues was on the management. The management has not proved either of these issues In the absence of any proof the mere allegations can not be taken as proof. The finding on these issues is, therefore, returned against the management and in favour of the workman.

Relief:

In the end, it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly.

S. R. BANSAL,

The 20th February, 1995.

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court, Ambala.
(Camp at Panchkula.)

Endorsement No. 195, dated the 22nd February, 1995.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Addl. Disst. & Sessions Judge,
Presiding Officer, Labour Court, Ambala.
(Camp at Panchkula.)

No. 14/13/87-6Lab./376.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of Transport Commissioner, Haryana, Chandigarh *versus* Tara Singh.

**IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT & SESSION JUDGE)
PRESIDING OFFICER, LABOUR COURT, AMBALA**

Reference No. 117/89

between

**WORKMAN SHRI TARA SINGH THROUGH TRADE UNION COUNCIL, PATIALA (PUNJAB)
and**

**THE MANAGEMENT OF (1) TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH
(2) GENERAL MANAGER, HARYANA ROADWAYS, KAITHAL**

Present :

Shri R. Nath, for the workman.

Shri V. K. Kohli, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for called as the 'Act') the Governor of Haryana referred the following dispute between the workman Shri Tara Singh and the management (1) Transport Commissioner, Haryana, Chandigarh and (2) General Manager, Haryana Roadways, Kaithal to this court for adjudication,—*vide* Haryana Government notification bearing No. 8645—50, dated the 24th February, 1989 :—

Whether the termination of the services of Shri Tara Singh is valid and justified? If not so, to what relief is he entitled?

The workman raised an industrial dispute by serving a demand notice dated 14th December, 1988 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. But the same did not yield the desired result necessitating the making of the present reference to this court by the appropriate Government.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and submitted his statement of claim dated 10th April, 1989. The plea taken by him is that he has put in eleven years of service as driver and his services were terminated on 20th September, 1988 without any notice, chargesheet, enquiry or compensation. He demanded his reinstatement with continuity of service and back wages.

The management in the written statement filed pleaded that on 2nd October, 1987 while the workman was on duty a criminal case bearing FIR No. 237, dated 4th October, 1987 under section 279/336, 307 IPC was registered against the workman in the Police Station City, Kaithal and the workman was convicted by the Additional District and Sessions Judges, Kurukshetra on the charges levelled against him and was sentenced to go imprisonment for a period of four years. Later on his services were terminated under Article 311 (2) (a) of the Constitution of India. It was pleaded that no enquiry was required to be conducted and therefore the claim of the workman is liable to be rejected.

The workman submitted his replication dated 18th August, 1989 stating therein that the appeal filed by him against the conviction order of Additional District Judge, Kurukshetra is pending before the Hon'ble Punjab and Haryana High Court. He denied other allegations and reiterated the pleas of his claim statement. On the rival contentions of the parties the following issues were settled for decision :—

- (1) Whether the impugned termination of services of the workman is invalid? OPW
- (2) Relief.

Parties led evidence I have heard the representatives of the parties. My findings are as under :—

Issue No. 1 :

The facts are not disputed in this case. The workman has appeared as WW-1 and stated on oath that his appeal has since been decided by the Hon'ble Punjab and Haryana High Court and he has been acquitted of the charges for which he was convicted by the Additional District and Sessions Judge, Kurukshetra. He produced Ex. W-1 photo copy of judgement rendered by the Hon'ble High Court dated January 15, 1992. The workman in his statement on oath also stated that before terminating his services the management did not serve him any chargesheet or hold any enquiry against him. He further stated that he was dismissed from service merely on the basis of the verdict of guilt returned by Additional District and Session Judge, Kurukshetra. He also stated that after this dismissal till date he is unemployed. The management has examined MW-1 Amir Chand Batra who also produced Ex. M-1 copy of judgement dated 21st March, 1988 of Additional District & Sessions Judge, Kurukshetra,—*vide* which he was found guilty of charges under section 307 IPC and sentenced to undergo rigorous imprisonment a period of four years and Ex. M-2 copy of the order dated 20th September, 1988 of General Manager, Haryana Roadways, Kaithal,—*vide* which the services of workman were terminated. This witness also stated that after his acquittal of criminal charges the workman has preferred representation for his reinstatement but yet no decision on his representation has been taken. MW-2 Shri Satish Kumar, Establishment Clerk also stated that the appeal preferred by the workman to the department for his reinstatement is yet pending.

Today the workman has made a statement in the court that during the pendency of the proceeding his representation/appeal has been accepted by the management and he has since been reinstated with continuity of service. The claim of workman therefore regarding his reinstatement with continuity of service has thus, become redundant and no finding is required to be given over the same.

The short question regarding which the controversy has been narrowed down is as to whether the workman is entitled to wages for the period he remained under dismissal.

From the above mentioned facts it is quite evident that the services of workman were terminated account of his conduct leading to his conviction in a criminal case under section 307 IPC. It is also borne out from the record that the appeal of workman which was pending in the Hon'ble Punjab & Haryana High Court has since been accepted and he has been acquitted of the charge for which he was convicted by the learned Additional District and Sessions Judge Kurukshetra. It thus follows that the ground on which the services of workman were terminated no longer holds good, because of this reason he has since been reinstated with continuity of service by the management. It thus, follows that the dismissal of the workman was unwarranted and he is entitled to wages during which he remained terminated. The workman has however made a statement that he relinquishes his claim to the extent of 25% of the relevant period provided the management is directed to make the payment of entire dues within a specified period. I, therefore, hold that the workman shall be entitled to the back wages for the above mentioned to the extent of 75% provided the management pays his entire dues within a period of 45 days from the date of publication of this award. If the management however fails to make the payment within stipulated period it shall be liable to make the payment of entire dues. The finding on this issue is returned in this manner.

Relief :

In the end, the reference shall stand answered accordingly.

S. R. BANSAL,

The 2nd February, 1995.

Additional District & Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endorsement No. 153, dated the 7th February, 1995

Foreclosed (four copies) to the Financial Commissioner & Secretary to Government of Haryana, Labour & Employment Departments Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District & Session Judge,
Presiding Officer, Labour Court, Ambala.

The 29th March, 1995

No 14/13/87-6 Lab./398.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, II, Faridabad in respect of the dispute between the workman and the management of M/s Transport Commissioner, Haryana, Chandigarh *versus* Rambir.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT II,
FARIDABAD

Reference No. 121/91

between

1. TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH.

2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD

.. Management

and

SHRI RAM BIR S/O SHRI AMAR SINGH C/O SHRI R. S. YADAV, ADVOCATE, DISTT.
COURT, SECTOR 12, FARIDABAD.

.. Workman.

Present :

Sh. S. K. Bakshi, for the workman.

Sh. Suraj Parkash, for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub Section (i) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 11190-96, dated 26th March, 1991 :—

Whether the termination of services of Shri Ram Bir is legal and justified? If not, to what relief, is he entitled to?

2. The case of the workman is that he was appointed by the respondent No. 2 on 10th November, 1989 as daily wages helper. He had been working till 15th July, 1990 to the entire satisfaction of his officers. On 15th July, 1990 he was abruptly stopped to join duty. He had been requesting daily the respondent No. 2 to allow him to resume duty till 22nd August, 1990 but he was put off one pretext or the other. Finally on 10th September, 1990 he was refused duty. Then he submitted demand notice dated 12th September, 1990. The termination of his services effected in the aforesaid manner is illegal and unjustified. Consequently, he is entitled to be reinstated into service with continuity in service and full back wages.

3. The respondent No. 2 submitted written statement dated 11th July, 1992 stating therein that the workman was not stopped to join duty on 15th July, 1990 as alleged by him. In fact his service was discontinued,—*vide* order dated 3rd May, 1990 being no longer required. The workman had not rendered service for a period of 240 days and as such he was not entitled to any relief.

4. The workman submitted rejoinder dated 18th November, 1992 re-asserting the previous averments and denying the averments of the respondents.

5. On the pleadings of the parties, the following issue was framed :—

1. As per terms of reference.

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the parties and have also gone through the evidence on record. My findings on the aforesaid issue are as under :—

Issue No. 1 :

8. The respondents have examined one witness Hemraj clerk and he deposed that as per record, the workman was appointed on 10th November, 1989 as daily wages helper against the post relating to the job of vehicles involved in accidents. He further stated that the term of appointment of the workman was renewed every month and he continued working till 30th April, 1990. In the end, he deposed that no new appointment letter was issued to the workman after 30th April, 1990 and he had rendered service for a total period of 173 days with the respondents.

9. On the other hand, the workman examined himself on oath and confirmed his allegation that he had worked till 15th July, 1990. He also stated that persons junior to him namely Beer Singh, Sita Ram, Gulab Singh, Rakesh and Maha Singh continued to work after the termination of his services. He also deposed that several persons namely Anil Kumar, Ashok Kumar and Harhand were appointed after the termination of his services. In the end, he stated that he was re-appointed,—*vide* order dated 16th January, 1995 Ex. W-2 as per order of the Hon'ble High Court dated 28th November, 1994, Ex. W-1.

10. On the basis of aforesaid evidence, it has been submitted on behalf of the respondents that it stands established that the workman had worked as daily wages worker during the period from 10th November, 1989 to 30th April, 1990 for a period of 173 days. His services were discontinued as no longer required for the job relating to the vehicles involved in accidents for which he was appointed. The termination of his services is thus legal and valid.

11. On the other hand, it has been contended on behalf of the workman that he had rendered service for a continuous period of more than 240 days during the period from 10th November, 1989 to 15th July, 1990 as per statement made by him on oath. It also stands proved from the statement of the workman that five persons junior to him were retained in service. That being so, the termination of services of the workman is illegal and unjustified being violative of the provisions of Sections 25-F and 25-G of the Act. Consequently, the workman is entitled to be reinstated into service with continuity in service and full back wages.

12. There is no dispute that the workman was appointed as helper on daily wages basis with effect from 10th November, 1989. The dispute is as to whether his services were terminated on 30th April, 1990 or 3rd May, 1990 or 15th July, 1990. MW-1 Hemraj Clerk categorically stated that the services of the workman were not renewed after 30th April, 1990. He made the statement on the basis of record and not on the basis of the personal knowledge as he himself was appointed as Clerk on 8th April, 1992. In these circumstances, he rightly stated in his cross examination that he did not know as to whether the workman had worked during the period from 30th April, 1990 to 31st July, 1990 or that persons junior to the workman were retained at the time of termination of services of the workman. It was for the workman to prove that he had actually worked during the period from 1st May, 1990 to 31st July, 1990. To prove this fact he could summon the person under whom he had worked during this period. He could also summon the record such as attendance register and payment of wages register. He could at least examine his colleagues who had worked with him during this period. He has also not even examined any of the persons junior to him.

who were retained in service at the time of termination of his services. He ever did not plead in his claim statement or in the replication that persons junior to him were retained in service. He also did not give the dates of appointment of the persons junior to him. In these circumstances, no implicit reliance can be placed on his self serving statement that he had worked during this period specially when it stands contradicted by the witness examined by the respondent. It is thus, held that the workman had not rendered service for a period of 240 days prior to the termination of his services. It is also held that the workman has failed to prove that the persons junior to him were retained in service at the time of termination of his services. Keeping in view, this position it can not be said that the respondents violated the provisions of Sections 25-F and 25-G of the Act. Consequently, it is held that the termination of services of the workman by the respondents is legal and justified. He is not entitled to any relief. The award is passed accordingly.

13. It may be added that this award shall have no effect qua the fresh appointment given to the workman by the respondents in pursuance to the order passed by the Hon'ble High Court referred to above.

U. B. KHANDUJA,

*The 28th February, 1995.

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 290, dated 1st March, 1995.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to the Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

No.14/13/87-6Lab./373.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s M. D. The Haryana State Federation of Consumers Co-op. wholesale Store Ltd., Chandigarh,—*Versus* Neelam Kumari.

IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT AND SESSIONS JUDGE).
PRESIDING OFFICER, LABOUR COURT, AMBALA.

Reference No. 250 of 1989.

WORKMAN SMT. NEELAM KUMARI WD/O LATE SHRI KANSI RAM, HOUSE NO. 2932/2, NEAR CIVIL HOSPITAL, AMBALA CITY AND THE MANAGEMENT (1) MANAGING DIRECTOR, THE HARYANA STATE FEDERATION OF CONSUMERS COOPERATIVE WHOLE SALE STORE LTD., CHANDIGARH (2) DISTRICT MANAGER, THE HARYANA STATE FEDERATION OF CONSUMER COOPERATIVE WHOLESALE STORE LTD., AMBALA CITY.

Present :

WR. Shri A. S. Puri.

MR. Shri D. R. Batra.

AWARD

In exercise of the powers conferred by clause (e) of sub-section 1 of the section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act') the Governor of Haryana referred the following dispute between the workman Smt. Neelam Kumari and the management (1) Managing Director, The Haryana State Federation of Consumers Cooperative Wholesale Store Ltd, Chandigarh (2) District Manager, The Haryana State Federation of Consumer Cooperative Wholesale Stores Ltd., Ambala City to this court,—*vide* Haryana Government Notification No. 29106—111, dated the 5th July, 1989:—

"Whether the termination of the services of Smt. Neelam Kumari is valid and justified ? If not, so, to what relief is he entitled ?"

The workman has raised the industrial dispute in this case by serving a demand notice dated 23rd March, 1989 under section 2-A of the Act. The Labour Officer-cum-Conciliation Officer took out conciliation proceedings. The same having failed, the appropriate government made the above mentioned reference to this court for adjudication.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and submitted his claim statement. According to the workman he was appointed as helper,—*vide* order dated the 9th June, 1988 of Managing Director of the Confed, Chandigarh. Later on she was appointed as salesgirl in continuance of her previous service by order dated 12th September, 1988. According to the workman she had rendered more than 240 days of service continuously when on 3rd February, 1989 she was terminated and relieved of her duties. It is alleged that the impugned order of termination passed is in total disregard of mandatory provisions of the law contained in section 25-F, 25-G and 25-N of the Industrial Disputes Act. She demanded her reinstatement with continuity of service and back wages.

The management has resisted the claim of workman. It was pleaded that the reference is bad in law and is not maintainable. On merits it was pleaded that the workman was appointed for a specific period on 9th June, 1988 as daily wages and later on her appointment was cancelled and she was relieved on 12th September, 1988, after she had rendered 90 days of service. Thereafter she applied afresh for the job of salesgirl and was appointed for a specific period of 6 months,—*vide* appointment letter dated 12th September, 1988 on a consolidated salary of Rs. 575 per month. It is clearly stipulated in the appointment letter that her services could be terminated at any time without assigning any reason. Accordingly her services were terminated on 3rd February, 1989. It was denied that any provisions of law has been violated while terminating the services of the workman.

The workman submitted replication controverting the allegations of the management as contained in the written statement and reiterating those made in the claim statement.

Shri S. D. Anand, one of my learned predecessor,—*vide* order dated 21st February, 1990 settled the under mentioned issues :—

- (1) Whether the impugned termination of services of the workman is invalid ? OPW
- (2) Relief.

Parties led evidence. I have heard the representatives of the parties. My issuewise findings are as under :—

Issue No. 1 :—

No doubt Smt. Neelam Kumari, workman appeared as WW-1 in support her case as made out in the claim statement but the question to be seen in this case is as to whether her appointment as a salesgirl, was in continuance of her earlier service as helper. Ex. M-1 is the copy of her appointment letter as a salesgirl. It shows that the appointment of the workman was on *ad hoc* basis for 6 months and her services could be terminated at any time without giving any notice or assigning any reason. Ex. M-6 is the copy of joining report of the workman in compliance with the above mentioned appointment letter and Ex. M-5 is the copy of termination order. Ex. M-2 is the copy of the appointment letter of workman as helper on daily wages basis. Ex. M-3 is the copy of the joining report dated 10th June, 1988. Ex. M-4 is the copy of second joining report dated 15th September, 1988. Ex. M-6 is the copy of order, dated 3rd February, 1989,—*vide* which the workman was relieved of her duties. The witness produced by the management stated that in all the workman has rendered 142 days of service. Ex. M-8 to Ex. M-11 are the copies of attendance register duly proved by MW-2 Jagdish Aggarwal. It shows that the workman worked for a period of three months as helper and worked as salesgirl from 15th September, 1988 till 3rd February, 1989. It is thus quite evident that the services of workman as helper were rendered by her independently of her joining as salesgirl and the earlier period can not be counted towards the later period. Her appointment as salesgirl were purely on *ad hoc* basis. It was specifically stipulated in the appointment letter that her appointment was a period of six months and her services could be terminated at any time during this period without any prior notice or assigning any reason. She accepted these terms and conditions of her appointment letter and submitted her joining report. Later on in accordance with these terms and conditions the services of workman were terminated. She obviously can not take shelter under section 25-F, 25-G and 25-N of the Act. Moreover she did not render more than 240 days of service continuously in a period preceding twelve months of her termination. She is, therefore, not entitled to the protection of the provisions of Industrial Disputes Act. The finding on this issue is, therefore, returned against the workman and in favour of the management.

Relief :

In the end, it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly.

S. R. BANSAL.

The 22nd February, 1995.

Additional District & Sessions Judge,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 194, dated the 22nd February, 1995.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL.

Additional District & Sessions Judge,
Presiding Officer,
Labour Court, Ambala.

The 23rd March, 1995

No. 14/13/87-6 Lab./445.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon, in respect of the dispute between the workman and the management of M/s Administrator, Municipal Committee, Rewari, *versus* Fateh Singh.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
LABOUR COURT, GURGAON

Reference No. 335 of 1991

between

FATEH SINGH, C/O SHRI MAHAVIR TYAGI, ORGANISER, INTUC, HANUMAN MANDIR,
GURGAON

and

THE MANAGEMENT OF M/S: ADMINISTRATOR, MUNICIPAL COMMITTEE, REWARI

Present :

Shri Mahavir Tyagi, A.R. for the workman.

Shri R. P. Mudgil, A.R. for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (in short 'the Act'), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication, —*vide* Haryana Government Labour Department, Endst. No. 29821—26, dated 6th August, 1991:—

Whether termination of services of Shri Fateh Singh is justified and legal? If not, to what relief is he entitled?

2. According to the claim statement, the workman was appointed on 4th July, 1984, as a peon and his services were illegally terminated on 1st August, 1990 without holding any enquiry. At the time of termination of service, the workman was drawing a salary of Rs. 729 p.m. It has been pleaded that the management did not give any notice nor compensation under section 25F of the I.D. Act was paid.

3. The management in their written statement denied the fact that the applicant was appointed as a peon. It was pleaded that the applicant had been engaged from 9th August, 1984 to 13th August 1984 against the leave vacancy of Shambhu Dyal, peon, Municipal Committee, Rewari and his services were engaged from time to time against the leave vacancy of employees of the Municipal Committee and he was never appointed on regular basis. It was pleaded that no notice or compensation was required to be paid to the applicant.

4. On the pleadings of the parties, following issue was framed:—

Whether termination of services of Shri Fateh Singh is justified and legal? If not, to what relief is he entitled?

5. I have heard authorised representatives of the parties and have gone through the evidence on record. My finding on the issue is under:—

6. The management has examined Mahavir Singh, MW-1, who deposed that the petitioner had never been appointed on regular post, but his services were engaged from time to time against leave vacancy and he had not completed 240 days in any year. Shri Ram Gupta, MW-2 reiterated the stand taken by the management in the written statement. He brought the attendance and salary register from August, 1984 to July, 1990 and deposed that the salary for the period the petitioner had worked had been paid to him. He stated that the wages had been paid according to the rates fixed by the Deputy Commissioner. He also produced on record the statement which shows the number of days the petitioner had worked against the leave vacancy of different employees.

7. On the other hand, the workman has examined himself as WW-1. He deposed that he was working with the management since July, 1994 and his services had been terminated in August, 1990 and he was drawing a salary of Rs. 729 p.m. He stated that no appointment letter had been given to him and his services were continuous.

8. The argument made on behalf of the management was that the services of the petitioner were neither *ad hoc*, regular or on temporary basis, but he was engaged against the leave vacancy of different employees and Ex. M-1 is the detail of the period during which services of Fateh Singh had been engaged. It was pointed out that Fateh Singh, had worked for five days i.e. 9th August, 1984 to 13th August, 1984 against the leave vacancy of Shambhu Dayal and then from 17th August, 1984 to 20th August, 1984 and from 1st September, 1984 to 20th September, 1984 against the leave vacancy of Ramji Lal and so on. It was pointed out that in the year, 1984, he had worked for 32 days. In the year, 1985, he had worked for 123 days and he had never completed a period of 240 days.

9. On the other hand, argument sought to be made on behalf of the workman was that the workman had completed 240 days and no notice or compensation as envisaged under section 25-F had been paid, therefore, his termination was illegal.

10. I, find no force in the arguments made on behalf of the workman. The management has produced the record to show that the services of the petitioner had been engaged from time to time against the leave vacancy and his appointment was neither *ad hoc*, regular or on temporary basis, but he was engaged against leave vacancies from time to time. He had not completed continuous service of 240 days, therefore, the management was not obliged to either pay compensation or give any notice. As such, the petitioner is not entitled to any relief. Reference is answered accordingly with no order as to costs.

ANITA CHAUDHARY,

The 22nd February, 1995.

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endst. No. 246, dated 28th February, 1995.

Forwarded, (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh under section 15 of the I.D. Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.